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October 23, 2008

BY HAND

Jeff S. Jordan

Supervisory Attorney

Complaints Examination & Legal Administration

Federal Election Commission

999 E Street, N.W.

Washington, D.C. 20463

Re: MUR 6062

Dear Mr. Jordan:

This letter is filed on behalf of the Harry Truman Fund ("the Fund"), George Scarola, as Executive Director, and Jason Bennett, as treasurer (collectively referred to as "Respondents") in response to the Complaint filed in the above-referenced matter by Christopher S. Morgan (the "Complainant"), alleging violations of the Federal Election Campaign Act (the "Act"). For the reasons set forth below, the Complaint is without merit and should be dismissed.

The Commission may find "reason to believe" only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the Act. See 11 C.F.R. § 111.4(a), (d). Here, Complainant claims that Respondents should have registered with the Commission as a federal political committee because it engaged in federal election activity – even though the Fund's major purpose is *not* the nomination or election of a federal candidate, and its communications do not expressly advocate the election or defeat of a clearly identified federal candidate.

The only communications cited by the Complainant as evidence of the Fund's obligation to register is a direct mail piece urging Washington state voters to "vote Democratic in 2008." But far from "advocat[ing] for the election of federal candidates," as the Complainant asserts, the proffered mailing does not even *refer* to any clearly identified candidate. See 11 C.F.R. § 100.17. Indeed, Complainant presents *no* evidence that the Respondents have made expenditures

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that expressly advocate the election or defeat of a clearly identified candidate for federal office. Nor does Complainant present any evidence that Respondents otherwise violated any Commission regulation. Accordingly, because the Complaint alleges no actual conduct by Respondents that violates a statute or regulation over which the Commission has jurisdiction, it should be dismissed.

Factual Background

The Harry Truman Fund is a registered nonfederal political committee in the state of Washington. *See* Exhibit A (Political Committee Registration). Its stated purpose is to "provide necessary infrastructure to recruit, train, and support winning Democratic candidates in the Washington State House of Representatives." *See* Exhibit B (Mission Statement). The Fund is simply a state PAC; it is neither a party committee nor an association of candidates for state or local office or state or local officeholders. *See* Exhibits A, B.

In August 2008, as part of its efforts to support Democratic state legislative candidates, the Harry Truman Fund paid for the production and postage of a mass mailing. The communication praised "Democrats in Washington State" for "leading the way," and asked voters to "Vote Democratic in 2008." The mailing did not identify a specific federal, state, or local candidate, nor did it expressly advocate for the election or defeat of a clearly identified candidate.¹

Legal Analysis

The Complaint fails to present any reason to believe that the Harry Truman Fund committed any violation of Commission regulations:

First, the Complaint's contention that the Fund was required to register as a federal political committee because it engaged in federal election activity, is without merit. While it is true that the Fund paid for the production and postage of a mass mailing that is accurately described as federal election activity, paying for federal election activity only triggers registration as a federal political committee if the payment qualifies as an expenditure under 2 U.S.C. § 431(9). *See* Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,104 (2002) (advising that payments for federal election activity do not themselves trigger political committee status "unless the payment otherwise qualifies as an expenditure

¹ Because the mailing promoted the Democratic Party without promoting or opposing a clearly identified federal candidate or non-federal candidate, it qualified as federal election activity. *See* 2 U.S.C. §§ 431(20), 431(21); 11 C.F.R. §§ 100.24, 100.25. However, the Harry Truman Fund is neither a party committee, nor an association of candidates or officeholders. *See* Exhibits A and B. Thus, it is not subject to the special financing and reporting provisions that apply to such activities when conducted by parties, or by associations of officeholders or candidates. *See* 2 U.S.C. § 441i(b); 11 C.F.R. §§ 300.32, 300.36.

under 2 U.S.C. § 431(9)"). Because the Fund's payment was not for a communication that "in express terms advocates the election or defeat of a clearly identified candidate for federal office," it is not treated as an expenditure for which registration as a political committee would be required. *Buckley v. Valeo*, 424 U.S. 1, 14 (1976); *see also* Factual and Legal Analysis, MUR 5755 and 5440 (New Democrat Network), Nov. 19, 2007 (finding that a political organization's "generic, party-building advertisements" did not constitute expenditures).

Express advocacy includes only those communications "which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s)" or those which "could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because" it contains an "electoral portion" that is "unmistakable, unambiguous, and suggestive of only one meaning" and "reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action." 11 C.F.R. § 100.22.

But here, the mailing asks only that the recipients "vote Democratic"; it does not identify any candidates, nor could it be reasonably interpreted to advocate the election or defeat of a clearly identified candidate. Without express advocacy under § 100.22, there is no basis to conclude that the Fund made expenditures that would have required it to register as a federal political committee. Nor does Complainant present any evidence that the Fund solicits or receives federal contributions, *see* 11 C.F.R. § 100.57, or coordinates public communications with political party committees or federal candidates, *see generally* 11 C.F.R. Part 109. Finally, there is no evidence that the Fund's major purpose is the nomination or election of federal candidates. Thus, the Complaint presents no reason to believe that the Fund was under any obligation to register as a federal political committee. Complainant's contention to the contrary is without merit, and should be dismissed immediately.

Second, Complainant's assertion that the Fund is required to use federally permissible funds for federal election activity is unfounded and should be dismissed. An organization paying for federal election activity is only required to use federal funds if it is a federal political committee; a state or local political party committee; or an association of candidates for state or local office or state or local officeholders. *See* 2 U.S.C. § 441i(b); 11 C.F.R. §§ 300.32, 300.36. The Fund qualifies as none of the three. As discussed above, it is not a political committee because it does not have as its major purpose the nomination or election of a federal candidate, and has not received contributions or made expenditures in excess of \$1,000. It is not a state or local political party because it is neither part of the official Democratic Party structure, nor is it established, financed, maintained, or controlled by the official party. 11 C.F.R. § 100.14; *see also* 2 U.S.C. § 441i(b); Exhibit A. And it is not an association of candidates for state or local office or state or local officeholders, because it is an independent state political committee,

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governed by an independent board of directors. *See* Exhibit B.

The Complaint against the Respondents is therefore entirely without merit. It urges a vast federalization of campaign finance law that neither Congress nor the Commission has yet undertaken. Under Complainants' view of the law, a state PAC that promotes the positions of a political party must register with the Commission and comply with federal source restrictions and amount limitations. Yet this is not the law. An organization that has as its sole purpose the promotion of Democratic candidates in the Washington State House of Representatives need not register as a federal political committee simply because it distributes generic campaign communications that promote the Democratic Party. Nor must it use federally permissible funds when it engages in generic campaign activity. To proceed in this matter would signal to state PACs across the board – regardless of their non-party, non-candidate, non-officeholder status – that they cannot safely be active in nonfederal elections.

For the foregoing reasons, Respondents respectfully request that the Commission dismiss the Complaint and take no further action.

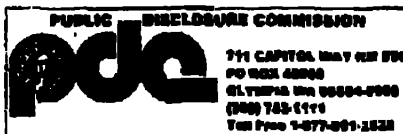
Very truly yours,



Brian G. Svoboda
Kate Sawyer Keane
Counsel to Respondents

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EXHIBIT A



Political Committee Registration

C1pc
(3/06)

DATE FILED PDC
JAN 17 2008

Committee Name (Show entire official name.)

Harry Truman Fund

Acronym:

Telephone: (206) 325-5013

Mailing Address

PO Box 9100

Fax: (206)

City
Seattle

County

KING

Zip + 4

98109

E-mail:

NEW OR AMENDED REGISTRATION?

- ☐ NEW. Complete entire form.
☒ AMENDS previous report. Complete entire form.

COMMITTEE STATUS

- ☒ Continuing (On-going; not established in anticipation of any particular campaign election.)
☐ _____ election year only. Date of general or special election: _____ (Year)

1. What is the purpose or description of the committee?

- ☐ **Statewide Political Party Committee** - official state or county central committee or legislative district committee. If you are not supporting the entire party ticket, attach a list or specify here the names of the candidates you support.

- ☐ **Ballot Committee** - Initiative, Bond, Levy, Recall, etc. Name or description of ballot measure.

Ballot Number FOR AGAINST

- ☒ **Other Political Committee** - PAC, caucus committee, political club, etc. If committee is related or affiliated with a business, association, union or similar entity, specify name:

For single election year only committees (not continuing committees): Is the committee supporting or opposing
(a) one or more candidates? ☐ Yes ☐ No If yes, attach a list of each candidate's name, office sought and political party affiliation.
(b) the entire ticket of a political party? ☐ Yes ☐ No If yes, identify the party:

2. Related or affiliated committees. List name, address and relationship.

☐ Continued on attached sheet

3. How much do you plan to spend during this entire election campaign, including the primary and general elections? Based on that estimate, choose one of the reporting options below. (If your committee status is continuing, estimate spending on a calendar year basis.)

If no box is checked you are obligated to use Full Reporting. See instruction manuals for information about reports required and changing reporting options.

☐ **MINI REPORTING**

Mini Reporting is selected. No more than \$3,500 will be raised or spent and no more than \$300 in the aggregate will be accepted from any one contributor.

☒ **FULL REPORTING**

Full Reporting is selected. The frequent, detailed campaign reports mandated by law will be filed as required.

4. Campaign Manager's or Media Contact's Name and Address

Telephone Number:

()

5. Treasurer's Name and Address (List deputy treasurers on attached sheet.)

☐ Continued on attached sheet

Jason Bennett PO Box 9100 Seattle WA 98109

Daytime Telephone Number:

(206) 325-5013

6. Committee Officers. List name, title, and address. Continue on attached sheet if necessary. See reverse for definition of "officer."

☐ Continued on attached sheet

George Scarola, Executive Director, PO Box 9100, Seattle WA 98109

7. Campaign Bank or Depository

Washington Mutual

Branch

Wallingford

City

Seattle

8. Campaign books must be open to the public by appointment between 9 a.m. and 5 p.m. during the eight days before the election, except Saturdays, Sundays, and legal holidays. In the space below, provide contact information for scheduling an appointment and the address where the inspection will take place. It is not acceptable to provide a post office box or an out-of-area address.

Street Address, Room Number, City where campaign books will be available for inspection

2633 Eastlake Ave E #102, Seattle

In order to make an appointment, contact the campaign at (telephone, fax, e-mail): () info@argostrategies.com

9. Eligibility to Give to State Office Candidates: During the 180 days prior to making a contribution to a state office candidate, your committee must have received contributions of \$10 or more from at least ten persons registered to vote in Washington State.

- ☒ A check here indicates your awareness of and pledge to comply with this provision. Absence of a check mark means your committee does not qualify to give to state office candidates (legislative and statewide executive candidates).

10. Signature and Certification. I certify that this statement is true, complete and correct to the best of my knowledge.

Committee Treasurer's Signature

Date
1/12/08

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EXHIBIT B